

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**CORRECTED  
FISCAL NOTE**

**HB 170 - SB 187**

March 6, 2015

**SUMMARY OF BILL:** Establishes a new enhancement factor for judges to consider when sentencing a person. A judge may enhance a defendant's sentence if he/she committed the offense during the time period between the occurrence of a disaster or emergency and when the emergency ends or ceases to be a threat to the orderly administration of government regardless of whether a state of emergency has been declared.

**ESTIMATED FISCAL IMPACT:**

On February 21, 2015, a fiscal note was issued estimating a fiscal impact as follows:

*Increase State Expenditures – \$428,100/Highest Projected Cost of Next 10 Years/Incarceration\*.*

Upon receiving further information, it was realized this impact was in error. The estimated impact is:

**(CORRECTED)**

**Increase State Expenditures – \$154,400/Highest Projected Cost of Next 10 Years/Incarceration\***

**Assumptions:**

- The bill creates a new enhancement factor whereby a judge may consider that a defendant committed the offense during the time period between the occurrence of a disaster or emergency and when the emergency ends or ceases to be a threat to the orderly administration of government regardless of whether a state of emergency has been declared.
- It is assumed that the crimes most likely to occur during an emergency are theft of property and burglary. It is assumed that one-half of one percent (0.5%) of thefts and burglaries occur during emergencies, and that the sentences will be enhanced by the bill.
- Statistics from the Department of Correction (DOC) show the following 10-year average admissions for theft and burglary:
  - Theft (\$500-\$1,000) – 332.5 admissions
  - Theft (\$1,000-\$10,000) – 944.6 admissions
  - Burglary (auto) – 194.5 admissions
  - Burglary (non-habitation) – 634.1 admissions

**HB 170 - SB 187 (CORRECTED)**

- Aggravated Burglary – 1,327.8 admissions
- It is assumed that the bill will result in the following number of convictions for crimes committed during a state of emergency:
  - two convictions for theft (\$500-\$1,000) ( $332.5 \times .005$ ), a Class E felony;
  - five convictions for theft (\$1,000-\$10,000) ( $944.6 \times .005$ ), a Class D felony;
  - one conviction for burglary (auto) ( $194.5 \times .005$ ), a Class E felony;
  - three convictions for burglary (non-habitation) ( $634.1 \times .005$ ), a Class D felony; and
  - seven convictions for aggravated burglary ( $1,327.8 \times .005$ ), a Class C felony.
- According to the DOC, the average operating cost per offender per day for calendar year 2015 is \$66.03.

*Assumptions Relative to Theft (\$500-\$1,000)*

- The bill will affect two theft (\$500-\$1,000) convictions each year.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the theft (\$500-\$1,000) convictions.
- Statistics from the DOC show the average time served for theft (\$500-\$1,000), a Class E felony, is 1.19 years. The average time served for a Class D felony is 2.04 years. The bill will result in each offender serving an additional 0.85 years ( $2.04 \text{ years} - 1.19 \text{ years}$ ).
- The DOC reports that 32.23 percent of offenders will re-offend within one year of their release. A recidivism discount of 32.23 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ( $2 \text{ offenders} \times .3223 = .64 \text{ offenders}$ ).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender [ $2 \text{ offenders} - 1 \text{ (recidivism discount)}$ ] serving an additional 0.85 years ( $310.46 \text{ days}$ ) for a total of \$20,500 ( $\$66.03 \times 310.46 \text{ days}$ ).

*Assumptions Relative to Theft (\$1,000-\$10,000)*

- The bill will affect five theft (\$1,000-\$10,000) convictions each year.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for one ( $5 \times .1178$ ) additional theft (\$1,000-\$10,000) admission for a total of six ( $5 + 1$ ).
- Statistics from the DOC show the average time served for theft (\$1,000-\$10,000), a Class D felony, is 1.97 years. The average time served for a Class C felony is 3.18 years. The bill will result in each offender serving an additional 1.21 years ( $3.18 \text{ years} - 1.97 \text{ years}$ ).
- The DOC reports that 42.92 percent of offenders will re-offend within two years of their release. A recidivism discount of 42.92 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ( $6 \text{ offenders} \times .4292 = 2.58 \text{ offenders}$ ).

- As the bill creates a new sentencing enhancement factor, it is not likely to increase the time served for someone who pleads guilty. It is assumed that two of the three convictions will result from guilty pleas and one conviction will result from a trial.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 1.21 years (441.95 days) for a total of \$29,182 (\$66.03 x 441.95 days).

*Assumptions Relative to Burglary (Auto)*

- The bill will affect one burglary (auto) conviction each year.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the burglary (auto) convictions.
- Statistics from the DOC show the average time served for burglary (auto), a Class E felony, is 1.23 years. The average time served for a Class D felony is 2.04 years. The bill will result in each offender serving an additional 0.81 years (2.04 years – 1.23 years).
- A recidivism discount of 32.23 percent applies, but due to the low number of convictions added by this legislation, the recidivism discount does not impact the incarceration cost for the bill.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 0.81 years (295.85 days) for a total of \$19,535 (\$66.03 x 295.85 days).

*Assumptions Relative to Burglary (Non-Habitation)*

- The bill will affect three burglary (non-habitation) convictions each year.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect burglary (non-habitation) convictions.
- Statistics from the DOC show the average time served for burglary (non-habitation), a Class D felony, is 2.35 years. The average time served for a Class C felony is 3.18 years. The bill will result in each offender serving an additional 0.83 years (3.18 years – 2.35 years).
- The DOC reports that 32.23 percent of offenders will re-offend within one year of their release. A recidivism discount of 32.23 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law (3 offenders x .3223 = 0.97 offenders).
- As the bill creates a new sentencing enhancement factor, it is not likely to increase the time served for someone who pleads guilty. It is assumed that one of the two convictions will result from guilty pleas and one conviction will result from a trial.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 0.83 years (303.16 days) for a total of \$20,018 (\$66.03 x 303.16 days).

*Assumptions Relative to Aggravated Burglary*

- The bill will affect seven aggravated burglary convictions each year.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for one ( $7 \times .1178$ ) additional aggravated burglary conviction for a total of eight ( $7 + 1$ ).
- Statistics from the DOC show the average time served for aggravated burglary, a Class C felony, is 2.99 years. The average time served for a Class B felony is 5.69 years. The bill will result in each offender serving an additional 2.7 years ( $5.69 \text{ years} - 2.99 \text{ years}$ ).
- The DOC reports that 49.1 percent of offenders will re-offend within two years of their release. A recidivism discount of 49.1 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same felony level as under current law ( $8 \text{ offenders} \times .491 = 3.93 \text{ offenders}$ ).
- As the bill creates a new sentencing enhancement factor, it is not likely to increase the time served for someone who pleads guilty. It is assumed that three of the four convictions will result from guilty pleas and one conviction will result from a trial.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 2.7 years (986.18 days) for a total of \$65,117 ( $\$66.03 \times 986.18 \text{ days}$ ).

*Assumption Relative to Total Incarceration Cost*

- The total additional incarceration cost is \$154,352 ( $\$20,500 + \$29,182 + \$19,535 + \$20,018 + \$65,117$ ).

*Assumption Relative to District Attorneys, Public Defenders, and the Courts*

- The bill does not create any new cases, rather affects the potential sentence that a defendant may receive. The bill may impact the work of the courts, the district attorneys, and the public defenders during the sentencing phase, but it will only do so for 11 cases each year. The bill does not significantly impact the operations of the Administrative Office of the Courts, the District Attorneys General Conference, or the District Public Defenders Conference so as to require any additional appropriations.

*\*Tennessee Code Annotated § 9-4-210 requires an appropriation from recurring revenues for the estimated operation cost of any law enacted after July 1, 1986 that results in a net increase in periods of imprisonment in state facilities. The amount appropriated shall be based upon the highest cost of the next 10 years.*

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.



Jeffrey L. Spalding, Executive Director

/trm